HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 20280 of 2000

Between:

Kota Sujathamma .. Petitioner

AND

The Special Tahsildar, Land Acquisition

Nellore ..Respondent.

Counsel for the Petitioners: None

Counsel for the Respondent: Govt. Pleader for Land Acquisition

Dated: March 14, 2006

ORDER:

Per G.S.Singhvi, C.J.

This is a petition for issuance of a writ in the nature of mandamus directing the respondent to make reference to the competent Civil Court under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act').

Although, no one has appeared for the petitioner, we do not consider it proper to

dismiss the petition in default or defer its adjudication on merits, because the matter has remained pending for the last 6 years.

The petitioner owned land measuring Ac.0-78 cents comprised in Sy.No.761/2 situated in Varigonda village, T.P.Gudur Mandal, Nellore District. The same was acquired by the State Government for widening Buddi Medium Drain. The Special Tahsildar (Land Acquisition) passed Award some time in September 1999. Thereafter notice dated October 31, 1999 was issued under Section 12 (2) of the Act. The petitioner claims to have protested against the amount of compensation and then served legal notice dated December 8, 1999 for making reference under Section 18 of the Act. The respondent, vide his letter dated July 14, 2000 rejected the request of the petitioner on the ground that she has accepted compensation without recording the words “under protest” in Form ‘C’.

We have heard learned Government Pleader for Land Acquisition and perused the record.

It is borne out from the record that the adjudication of the writ petition was deferred in view of the pendency of the reference made in Writ Appeal No. 1752 of 2001 to a larger Bench.

Learned Government Pleader very fairly says that the reference made to the Full Bench has been answered on
September 19, 2003. He also concedes that the petitioner’s case is covered by the Judgment of the Full Bench.

We have gone through the Judgment of the Full Bench, the operative part of which reads as under:

> “In the view we have taken, we answer the reference holding that in the absence of any manner of protest having been specified in the Act and the time when protest is to be lodged, act of filing of an application seeking reference to Civil Court within the period of limitation prescribed under Section 18 of the Act will impliedly infer that the claimant/person interested had accepted the amount with protest. Not expressly lodging protest at the time of receiving amount in such circumstance would not amount to waiver of the right to seek reference under Section 18 of the Act.”

It is an undisputed position that the petitioner had filed application for reference

within the period of limitation, therefore, her case is squarely covered by the answer given by the Full Bench.

Consequently the writ petition is allowed and the respondent is directed to make reference under Section 18 of the Act.

The needful be done within one month from the date of receipt of a copy of this order.

G.S.SINGHVI, C.J.

March 14, 2006

G.BHAVANI PRASAD, J.

Note:

The Registry is directed to inform the petitioners that her writ petition has been allowed vide order of today and she may pursue her cause before the respondent and thereafter before the competent Civil Court.

/B.O/

GRR